



April 1, 2005

ENGROSSED SENATE BILL No. 504

DIGEST OF SB 504 (Updated March 30, 2005 9:33 am - DI 109)

Citations Affected: IC 20-26; IC 36-1.

Synopsis: School corporation public works projects. Authorizes the governing body of a school corporation to enter into a public works contract by a competitive sealed bidding process through a multistate cooperative purchasing program. Includes water and wastewater under the guaranteed savings contracts and utility efficiency programs that may be used by local units of government to reduce consumption costs or to provide billable revenue increases.

Effective: July 1, 2005.

Hershman, Sipes

(HOUSE SPONSORS — THOMPSON, BOTTORFF)

January 18, 2005, read first time and referred to Committee on Education and Career Development.

February 24, 2005, reported favorably — Do Pass.

February 28, 2005, read second time, ordered engrossed. Engrossed.

March 1, 2005, read third time, passed. Yeas 43, nays 5.

HOUSE ACTION

March 14, 2005, read first time and referred to Committee on Education.

March 31, 2005, amended, reported — Do Pass.

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ES 504—LS 7812/DI 75+



April 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 504

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-26-5-4, AS ADDED BY HEA 1288-2005,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005]: Sec. 4. In carrying out the school purposes of a school
4 corporation, the governing body acting on the school corporation's
5 behalf has the following specific powers:

6 (1) In the name of the school corporation, to sue and be sued and
7 to enter into contracts in matters permitted by applicable law.

8 (2) To take charge of, manage, and conduct the educational affairs
9 of the school corporation and to establish, locate, and provide the
10 necessary schools, school libraries, other libraries where
11 permitted by law, other buildings, facilities, property, and
12 equipment.

13 (3) To appropriate from the school corporation's general fund an
14 amount, not to exceed the greater of three thousand dollars
15 (\$3,000) per budget year or one dollar (\$1) per pupil, not to
16 exceed twelve thousand five hundred dollars (\$12,500), based on
17 the school corporation's previous year's average daily membership

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(as defined in IC 21-3-1.6-1.1) to promote the best interests of the school corporation through:

- (A) the purchase of meals, decorations, memorabilia, or awards;
- (B) provision for expenses incurred in interviewing job applicants; or
- (C) developing relations with other governmental units.

(4) To:

(A) Acquire, construct, erect, maintain, hold, and contract for construction, erection, or maintenance of real estate, real estate improvements, or an interest in real estate or real estate improvements, as the governing body considers necessary for school purposes, including buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchase money contracts providing for a retention of a security interest by the seller until payment is made or by notes where the contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or IC 21-5-12.

(B) Repair, remodel, remove, or demolish, or to contract for the repair, remodeling, removal, or demolition of the real estate, real estate improvements, or interest in the real estate or real estate improvements, as the governing body considers necessary for school purposes.

(C) Provide for ~~energy~~ conservation measures through utility ~~energy~~ efficiency programs or under a guaranteed ~~energy~~ savings contract as described in IC 36-1-12.5.

(5) To acquire personal property or an interest in personal property as the governing body considers necessary for school purposes, including buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by cash purchase or under conditional sales or purchase money contracts providing for a security interest by the seller until payment is made or by

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notes where the contract, security, retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish the personal property. All purchases and contracts delineated under the powers given under subdivision (4) and this subdivision are subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of state agencies as provided in section 6 of this chapter.

(6) To sell or exchange real or personal property or interest in real or personal property that, in the opinion of the governing body, is not necessary for school purposes, in accordance with IC 20-26-7, to demolish or otherwise dispose of the property if, in the opinion of the governing body, the property is not necessary for school purposes and is worthless, and to pay the expenses for the demolition or disposition.

(7) To lease any school property for a rental that the governing body considers reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children five (5) years of age through fourteen (14) years of age that operates before or after the school day, or both, and during periods when school is not in session;

if the property is not needed for school purposes. Under this subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if payment for the property subject to a long term lease is made from money in the school corporation's debt service fund, all proceeds from the long term lease ~~must be~~ **are** deposited in the school corporation's debt service fund so long as payment for the property has not been made. The governing body may, at the governing body's option, use the procedure specified in IC 36-1-11-10 in leasing property under this subdivision.

(8) To:

(A) Employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under

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IC 20-28-5), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school purposes, including the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and other personnel or services as the governing body considers necessary for school purposes.

(B) Fix and pay the salaries and compensation of persons and services described in this subdivision.

(C) Classify persons or services described in this subdivision and to adopt schedules of salaries or compensation.

(D) Determine the number of the persons or the amount of the services employed or contracted for as provided in this subdivision.

(E) Determine the nature and extent of the duties of the persons.

The compensation, terms of employment, and discharge of teachers are, however, subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers ~~is~~ **are** subject to and governed by laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of the school corporation must be submitted to the state board of accounts for approval to the end that the services are used by the school corporation when the governing body determines that it is in the best interest of the school corporation while at the same time providing reasonable accountability for the funds expended.

(9) Notwithstanding the appropriation limitation in subdivision (3), when the governing body by resolution considers a trip by an employee of the school corporation or by a member of the governing body to be in the interest of the school corporation, including attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit the employee to be absent in connection with the trip without any loss in pay and to refund to the employee or to the member the

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employee's or member's reasonable hotel and board bills and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

(10) To transport children to and from school, when in the opinion of the governing body the transportation is necessary, including considerations for the safety of the children and without regard to the distance the children live from the school, the transportation to be otherwise in accordance with applicable law.

(11) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate the lunch program, and the purchase of material and supplies for the lunch program, charging students for the operational costs of the lunch program, fixing the price per meal or per food item. To operate the lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in a surplus commodity or lunch aid program.

(12) To purchase textbooks, to furnish textbooks without cost or to rent textbooks to students, to participate in a textbook aid program, all in accordance with applicable law.

(13) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(14) To levy taxes, to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with applicable law. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 21-2-21.

(15) To purchase insurance or to establish and maintain a program of self-insurance relating to the liability of the school corporation or the school corporation's employees in connection with motor vehicles or property and for additional coverage to the extent permitted and in accordance with IC 34-13-3-20. To purchase additional insurance or to establish and maintain a program of self-insurance protecting the school corporation and members of the governing body, employees, contractors, or agents of the school corporation from liability, risk, accident, or loss related to school property, school contract, school or school related activity, including the purchase of insurance or the establishment and maintenance of a self-insurance program protecting persons described in this subdivision against false

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imprisonment, false arrest, libel, or slander for acts committed in the course of the persons' employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to property owned, leased, or held by the school corporation. To:

(A) participate in a state employee health plan under IC 5-10-8-6.6;

(B) purchase insurance; or

(C) establish and maintain a program of self-insurance; to benefit school corporation employees, including accident, sickness, health, or dental coverage, provided that a plan of self-insurance must include an aggregate stop-loss provision.

(16) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state government, the federal government, or from any other source.

(17) To defend any member of the governing body or any employee of the school corporation in any suit arising out of the performance of the member's or employee's duties for or employment with, the school corporation, if the governing body by resolution determined that the action was taken in good faith. To save any member or employee harmless from any liability, cost, or damage in connection with the performance, including the payment of legal fees, except where the liability, cost, or damage is predicated on or arises out of the bad faith of the member or employee, or is a claim or judgment based on the member's or employee's malfeasance in office or employment.

(18) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures for the government and management of the schools, property, facilities, and activities of the school corporation, the school corporation's agents, employees, and pupils and for the operation of the governing body, which rules, regulations, and procedures may be designated by an appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

(19) To ratify and approve any action taken by a member of the governing body, an officer of the governing body, or an employee of the school corporation after the action is taken, if the action could have been approved in advance, and in connection with the action to pay the expense or compensation permitted under IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19, and

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IC 21-2-21 or any other law.

(20) To exercise any other power and make any expenditure in carrying out the governing body's general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational standpoint in carrying out school purposes of the school corporation, including the acquisition of property or the employment or contracting for services, even though the power or expenditure is not specifically set out in this chapter. The specific powers set out in this section do not limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19, and IC 21-2-21 by specific language or by reference to other law.

SECTION 2. IC 36-1-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a school corporation may participate in a utility ~~energy~~ efficiency program or may enter into a guaranteed ~~energy~~ savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

(g) Instead of proceeding under this chapter, the governing body of a school corporation may enter into a public works contract by a competitive sealed bidding process through a multistate cooperative purchasing program entered into under IC 36-1-7.

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SECTION 3. IC 36-1-12.5-0.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.7. As used in this chapter, "causally connected work" means work that is required to properly implement ~~an energy~~ a conservation measure.

SECTION 4. IC 36-1-12.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter "~~energy~~ "conservation measure":

(1) means:

(A) a school facility alteration; ~~or~~

(B) an alteration of a structure (as defined in IC 36-1-10-2 ~~or as referred to in IC 36-1-12-2~~) or system; or

(C) a technology upgrade;

designed to ~~provide billable revenue increases or~~ reduce energy ~~or water~~ consumption costs, ~~wastewater costs~~, or other operating costs; ~~including and~~

(2) includes the following:

(1) (A) Providing insulation of the school facility or structure and systems ~~within in~~ the school facility or structure.

(2) (B) Installing or providing for window and door systems, including:

(A) (i) storm windows and storm doors;

(B) (ii) caulking or weatherstripping;

(C) (iii) multi-glazed windows and doors;

(D) (iv) heat absorbing or heat reflective glazed and coated windows and doors;

(E) (v) additional glazing;

(F) (vi) the reduction in glass area; and

(G) (vii) other modifications that reduce energy consumption.

(3) (C) Installing automatic energy control systems.

(4) (D) Modifying or replacing heating, ventilating, or air conditioning systems.

(5) (E) Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility or structure.

(6) (F) Providing for other ~~energy~~ conservation measures that ~~provide billable revenue increases or~~ reduce energy ~~or water~~ consumption, ~~or~~ reduce operating costs, ~~or reduce wastewater costs~~, including future:

(A) (i) labor costs;

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~~(B)~~ (ii) costs or revenues for contracted services; and
~~(C)~~ (iii) related capital expenditures.

(G) Installing an energy recovery system.

(H) Installing cogeneration systems that produce:

(i) steam; or

(ii) forms of energy such as heat or electricity;

for use primarily in a building or complex of buildings.

(I) Installing water and sewer conservation measures, including:

(i) plumbing fixtures; and

(ii) infrastructure.

(J) Installing equipment upgrades that improve accuracy of billable revenue generating systems.

(K) Installing automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.

SECTION 5. IC 36-1-12.5-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. As used in this chapter, "governing body" means the following:

(1) With respect to school corporations, the governing body (as defined in IC 20-10.1-1-5).

(2) With respect to a public library, the library board (as defined in IC 20-14-1-2).

(3) With respect to a library described in IC 20-14-7-6, the trustees of the library.

(4) With respect to ~~other political subdivisions;~~ **units,** the legislative body (as defined in IC 36-1-2-9).

(5) With respect to other political subdivisions, the board or officer that has the power to award contracts.

SECTION 6. IC 36-1-12.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "guaranteed ~~energy~~ savings contract" refers to a contract entered into under this chapter, in which a qualified provider enters into an agreement with the governing body to:

(1) evaluate and recommend to the governing ~~body~~ **energy body's** conservation measures; and

(2) provide for the implementation of at least one (1) ~~energy~~ conservation measure.

SECTION 7. IC 36-1-12.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) As used in this chapter, "qualified provider" means the following:

(1) Before July 1, 1999, the term means a person that satisfies

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- 1 both of the following:
- 2 (A) The person is experienced in the design, implementation,
- 3 and installation of energy conservation measures.
- 4 (B) The person submits to the school corporation or political
- 5 subdivision a performance bond to ensure the qualified
- 6 provider's faithful performance of the qualified provider's
- 7 obligations over the term of the guaranteed energy savings
- 8 contract.
- 9 (2) After June 30, 1999, the term means a person that satisfies all
- 10 of the following:
- 11 (A) **Subject to subdivision (3)**, the person is experienced in
- 12 the design, implementation, and installation of energy
- 13 conservation measures.
- 14 (B) The person is certified and meets the requirements of
- 15 IC 4-13.6-4. The person's response to the request for proposals
- 16 must include a copy of the person's certificate of qualification
- 17 issued under IC 4-13.6-4.
- 18 (C) **Subject to subdivision (3)**, the person provides energy
- 19 conservation engineering services by a professional engineer
- 20 licensed under IC 25-31 who is under the person's direct
- 21 employment and supervision. The person's response to the
- 22 request for proposals must include the license number of each
- 23 professional engineer employed by the person to satisfy the
- 24 requirement of this clause.
- 25 (D) The person provides:
- 26 (i) monitoring for the facility performance guarantee; and
- 27 (ii) service personnel under the person's direct employment
- 28 and supervision;
- 29 for the duration of the contract's guarantee.
- 30 (E) The person performs at least twenty percent (20%) of the
- 31 work (measured in dollars of the total contract price) with its
- 32 own workforce.
- 33 (F) The person submits to the school corporation or political
- 34 subdivision a performance bond to ensure the qualified
- 35 provider's faithful performance of the qualified provider's
- 36 obligations over the term of:
- 37 (i) the guaranteed energy savings contract; or
- 38 (ii) the guaranteed savings contract.
- 39 **(3) With respect to conservation measures for which a**
- 40 **contract is executed after June 30, 2005, the term includes a**
- 41 **person that satisfies the following:**
- 42 (A) The person is experienced in the design,

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1 **implementation, and installation of conservation measures.**
 2 **(B) The person provides engineering services with respect**
 3 **to conservation measures by a professional engineer**
 4 **licensed under IC 25-31 who is under the person's direct**
 5 **employment and supervision. The person's response to the**
 6 **request for proposals must include the license number of**
 7 **each professional engineer employed by the person to**
 8 **satisfy the requirement of this clause.**

9 (b) For purposes of a guaranteed energy savings contract entered
 10 into before July 1, 1999, a person who was a qualified provider under
 11 subsection (a)(1) at the time the contract was entered into remains a
 12 qualified provider for that contract after June 30, 1999. If the person
 13 enters into:

- 14 **(1) a guaranteed energy savings contract after June 30, 1999, and**
 15 **before July 1, 2005, the person must satisfy the requirements of**
 16 **subsection (a)(2); or**
 17 **(2) a guaranteed savings contract after June 30, 2005, the**
 18 **person must satisfy the requirements of subsections (a)(2) and**
 19 **(a)(3);**

20 to be considered a qualified provider.

21 SECTION 8. IC 36-1-12.5-3.5 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. As used in this
 23 chapter, "related capital expenditures" includes capital costs that:

- 24 (1) the governing body reasonably believes will be incurred
 25 during the contract term;
 26 (2) are part of or are causally connected to the ~~energy~~
 27 conservation measures being implemented; and
 28 (3) are documented by industry engineering standards.

29 SECTION 9. IC 36-1-12.5-4 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. As used in this
 31 chapter, "utility ~~energy~~ efficiency program" refers to an energy, **a**
 32 **water, or a wastewater** efficiency program that:

- 33 (1) includes ~~an energy~~ a conservation measure;
 34 (2) is established by a public utility (as defined in IC 8-1-8.7-2);
 35 and
 36 (3) is undertaken pursuant to this chapter.

37 SECTION 10. IC 36-1-12.5-5 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The governing
 39 body may enter into an agreement with a public utility to participate in
 40 a utility ~~energy~~ efficiency program or enter into a guaranteed ~~energy~~
 41 savings contract with a qualified provider to **increase the political**
 42 **subdivision's billable revenues** or reduce the school corporation's or

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the political subdivision's energy **or water** consumption, **wastewater usage** costs, or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds:

- (1) that the amount the governing body would spend on the **energy** conservation measures under the contract and that are recommended in the report is not likely to exceed the amount of **increased billable revenues or the amount** to be saved in energy **and water** consumption costs, **wastewater usage costs**, and other operating costs over ten (10) years from the date of installation if the recommendations in the report were followed; and
- (2) in the case of a guaranteed **energy** savings contract, the qualified provider provides a written guarantee as described in subsection (d)(2).

(b) Before entering into an agreement to participate in a utility **energy** efficiency program or a guaranteed **energy** savings contract under this section, the governing body must publish notice under subsection (c) indicating:

- (1) that the governing body is requesting public utilities or qualified providers to propose **energy** conservation measures through: ~~either~~
 - (A) a utility **energy** efficiency program; or
 - (B) a guaranteed **energy** savings contract; and
- (2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

- (1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;
- (2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty (30) days before the date by which proposals must be received; and
- (3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility **energy** efficiency program or guaranteed **energy** savings contract under this section must provide that:

- (1) all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ten (10) years or the average life of the **energy** conservation measures installed from the date of final installation; ~~and~~

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(2) in the case of the guaranteed ~~energy~~ savings contract:

(A) the:

(i) savings in energy **and water consumption costs, wastewater usage costs, and other** operating costs; and

(ii) **increase in billable revenues;**

due to the ~~energy~~ conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(3) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(e) An agreement or a contract under this chapter is subject to IC 5-16-7.

SECTION 11. IC 36-1-12.5-5.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.3. (a) This section applies only to a guaranteed energy savings contract **or a guaranteed savings contract** entered into after June 30, 1999.

(b) A qualified provider may enter into a subcontract:

(1) with a value of more than one hundred fifty thousand dollars (\$150,000); and

(2) for the performance of any part of a guaranteed energy savings contract **or guaranteed savings contract;**

only if the subcontractor is certified under IC 4-13.6-4.

SECTION 12. IC 36-1-12.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. IC 6-1.1-20 does not apply to an agreement to participate in:

(1) a utility ~~energy~~ efficiency program; or

(2) **a** guaranteed ~~energy~~ savings contract;

entered into under this chapter.

SECTION 13. IC 36-1-12.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before the public utility or the qualified provider may install equipment in, make modifications to, or remodel a building or complex of buildings under a utility ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings contract, the public utility or the qualified provider (whichever applies) must issue a report that includes estimates for the following:

(1) All costs attributable to the work stipulated in the agreement or the contract, including the costs of design, engineering,

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1 installation, maintenance, repairs, or debt service.

2 (2) The amounts by which:

3 (A) energy **or water** consumption;

4 (B) **wastewater costs**; or

5 (C) operating costs;

6 will be reduced.

7 **(3) The amounts by which billable revenues will be increased.**

8 (b) The report must also contain a listing of contractors and
9 subcontractors to be used by the public utility or the qualified provider
10 with respect to the ~~energy~~ conservation measures.

11 SECTION 14. IC 36-1-12.5-7 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. If the governing
13 body enters into an installment payment contract for the purchase and
14 installation of ~~energy~~ conservation measures under this chapter, the
15 balance of the payments must be paid in installments not to exceed the
16 lesser of ten (10) years or the average life of the ~~energy~~ conservation
17 measure installed from the date of final installation. Payments under an
18 installment payment contract are subject to annual appropriation by the
19 fiscal body of the school corporation or political subdivision and do not
20 constitute an indebtedness of the school corporation or political
21 subdivision within the meaning of a constitutional or statutory debt
22 limitation. **Annual revenues or savings from a guaranteed savings**
23 **contract may be less than annual payments on the contract if**
24 **during the length of the contract total savings and increased**
25 **billable revenues occur as provided for by the contract. The**
26 **financing of a guaranteed savings contract may be provided by:**

27 (1) the vendor of the guaranteed energy, water, or wastewater
28 savings program; or

29 (2) a third-party financial institution or company.

30 SECTION 15. IC 36-1-12.5-8 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. ~~Energy~~ Conservation
32 measures installed under a utility ~~energy~~ efficiency program or a
33 guaranteed ~~energy~~ savings contract must be approved by the following:

34 (1) The state department of health, office of the state fire marshal,
35 office of the state building commissioner, and any other state
36 agency designated by statute.

37 (2) An architect or engineer licensed under IC 25-4 or IC 25-31
38 if the ~~energy~~ conservation measures have a cost of more than fifty
39 thousand dollars (\$50,000).

40 SECTION 16. IC 36-1-12.5-9 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The contractor
42 and each subcontractor engaged in installing ~~energy~~ conservation

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measures under a guaranteed ~~energy~~ savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work, together with an accurate record of the number of hours worked by each worker and the actual wages paid.

(b) The payroll records required to be kept under this section must be open to inspection by an authorized representative of the governing body or the department of labor.

SECTION 17. IC 36-1-12.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. The governing body shall:

(1) provide to the department of commerce not more than sixty (60) days after the date of execution of the guaranteed ~~energy~~ savings contract:

(A) a copy of the executed guaranteed ~~energy~~ savings contract;

(B) the:

(i) energy **or water** consumption costs;

(ii) **wastewater usage costs; and**

(iii) **billable revenues, if any;**

before the date of execution of the guaranteed ~~energy~~ savings contract; and

(C) the documentation using industry engineering standards for:

(i) stipulated savings; and

(ii) related capital expenditures; and

(2) annually report to the department of commerce, in accordance with procedures established by the department of commerce, the savings resulting in the previous year from the guaranteed ~~energy~~ savings contract or utility ~~energy~~ efficiency program.

SECTION 18. IC 36-1-12.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) A guaranteed ~~energy~~ savings contract that includes stipulated savings must specify the methodology used to calculate the savings using industry engineering standards.

(b) Stipulated savings may be used for ~~energy~~ conservation measures including the following:

(1) Heating.

(2) Air conditioning.

(3) Ventilating.

(4) Lighting.

(5) Roofing.

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(6) Windows.

(7) Water conservation.

(8) Fuel and power improvements.

(9) Wastewater generation.

(10) Billable revenue increases.

~~(9)~~ **(11)** Any work that is causally connected to the ~~energy~~ conservation measures listed in subdivisions (1) through ~~(8)~~: **(10)**.

(c) The guaranteed ~~energy~~ savings contract shall:

(1) describe stipulated savings for:

(A) ~~energy~~ conservation measures; and

(B) work causally connected to the ~~energy~~ conservation measures; and

(2) document assumptions by industry engineering standards.

SECTION 19. IC 36-1-12.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) An improvement that is not causally connected to ~~an energy~~ a conservation measure may be included in a guaranteed ~~energy~~ savings contract if:

(1) the total value of the improvement does not exceed fifteen percent (15%) of the total value of the guaranteed ~~energy~~ savings contract; and

(2) either:

(A) the improvement is necessary to conform to a law, a rule, or an ordinance; or

(B) an analysis within the guaranteed ~~energy~~ savings contract demonstrates that:

(i) there is an economic advantage to the political subdivision in implementing an improvement as part of the guaranteed ~~energy~~ savings contract; and

(ii) the savings justification for the improvement is documented by industry engineering standards.

(b) The information required under subsection (a) must be reported to the department of commerce.

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COMMITTEE REPORT

Madam President: The Senate Committee on Education and Career Development, to which was referred Senate Bill No. 504, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 504 as introduced.)

LUBBERS, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred Senate Bill 504, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 20-26-5-4, AS ADDED BY HEA 1288-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. In carrying out the school purposes of a school corporation, the governing body acting on the school corporation's behalf has the following specific powers:

- (1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law.
- (2) To take charge of, manage, and conduct the educational affairs of the school corporation and to establish, locate, and provide the necessary schools, school libraries, other libraries where permitted by law, other buildings, facilities, property, and equipment.
- (3) To appropriate from the school corporation's general fund an amount, not to exceed the greater of three thousand dollars (\$3,000) per budget year or one dollar (\$1) per pupil, not to exceed twelve thousand five hundred dollars (\$12,500), based on the school corporation's previous year's average daily membership (as defined in IC 21-3-1.6-1.1) to promote the best interests of the school corporation through:
 - (A) the purchase of meals, decorations, memorabilia, or awards;
 - (B) provision for expenses incurred in interviewing job

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applicants; or

(C) developing relations with other governmental units.

(4) To:

(A) Acquire, construct, erect, maintain, hold, and contract for construction, erection, or maintenance of real estate, real estate improvements, or an interest in real estate or real estate improvements, as the governing body considers necessary for school purposes, including buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchase money contracts providing for a retention of a security interest by the seller until payment is made or by notes where the contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or IC 21-5-12.

(B) Repair, remodel, remove, or demolish, or to contract for the repair, remodeling, removal, or demolition of the real estate, real estate improvements, or interest in the real estate or real estate improvements, as the governing body considers necessary for school purposes.

(C) Provide for ~~energy~~ conservation measures through utility ~~energy~~ efficiency programs or under a guaranteed ~~energy~~ savings contract as described in IC 36-1-12.5.

(5) To acquire personal property or an interest in personal property as the governing body considers necessary for school purposes, including buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by cash purchase or under conditional sales or purchase money contracts providing for a security interest by the seller until payment is made or by notes where the contract, security, retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish the personal property. All purchases and contracts delineated under the powers given under subdivision (4)

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and this subdivision are subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of state agencies as provided in section 6 of this chapter.

(6) To sell or exchange real or personal property or interest in real or personal property that, in the opinion of the governing body, is not necessary for school purposes, in accordance with IC 20-26-7, to demolish or otherwise dispose of the property if, in the opinion of the governing body, the property is not necessary for school purposes and is worthless, and to pay the expenses for the demolition or disposition.

(7) To lease any school property for a rental that the governing body considers reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children five (5) years of age through fourteen (14) years of age that operates before or after the school day, or both, and during periods when school is not in session;

if the property is not needed for school purposes. Under this subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if payment for the property subject to a long term lease is made from money in the school corporation's debt service fund, all proceeds from the long term lease ~~must be~~ are deposited in the school corporation's debt service fund so long as payment for the property has not been made. The governing body may, at the governing body's option, use the procedure specified in IC 36-1-11-10 in leasing property under this subdivision.

(8) To:

(A) Employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under IC 20-28-5), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school

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purposes, including the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and other personnel or services as the governing body considers necessary for school purposes.

(B) Fix and pay the salaries and compensation of persons and services described in this subdivision.

(C) Classify persons or services described in this subdivision and to adopt schedules of salaries or compensation.

(D) Determine the number of the persons or the amount of the services employed or contracted for as provided in this subdivision.

(E) Determine the nature and extent of the duties of the persons.

The compensation, terms of employment, and discharge of teachers are, however, subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers ~~is~~ **are** subject to and governed by laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of the school corporation must be submitted to the state board of accounts for approval to the end that the services are used by the school corporation when the governing body determines that it is in the best interest of the school corporation while at the same time providing reasonable accountability for the funds expended.

(9) Notwithstanding the appropriation limitation in subdivision (3), when the governing body by resolution considers a trip by an employee of the school corporation or by a member of the governing body to be in the interest of the school corporation, including attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit the employee to be absent in connection with the trip without any loss in pay and to refund to the employee or to the member the employee's or member's reasonable hotel and board bills and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

(10) To transport children to and from school, when in the

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opinion of the governing body the transportation is necessary, including considerations for the safety of the children and without regard to the distance the children live from the school, the transportation to be otherwise in accordance with applicable law.

(11) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate the lunch program, and the purchase of material and supplies for the lunch program, charging students for the operational costs of the lunch program, fixing the price per meal or per food item. To operate the lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in a surplus commodity or lunch aid program.

(12) To purchase textbooks, to furnish textbooks without cost or to rent textbooks to students, to participate in a textbook aid program, all in accordance with applicable law.

(13) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(14) To levy taxes, to make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with applicable law. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 21-2-21.

(15) To purchase insurance or to establish and maintain a program of self-insurance relating to the liability of the school corporation or the school corporation's employees in connection with motor vehicles or property and for additional coverage to the extent permitted and in accordance with IC 34-13-3-20. To purchase additional insurance or to establish and maintain a program of self-insurance protecting the school corporation and members of the governing body, employees, contractors, or agents of the school corporation from liability, risk, accident, or loss related to school property, school contract, school or school related activity, including the purchase of insurance or the establishment and maintenance of a self-insurance program protecting persons described in this subdivision against false imprisonment, false arrest, libel, or slander for acts committed in the course of the persons' employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to property owned, leased, or held by the

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school corporation. To:

- (A) participate in a state employee health plan under IC 5-10-8-6.6;
 - (B) purchase insurance; or
 - (C) establish and maintain a program of self-insurance; to benefit school corporation employees, including accident, sickness, health, or dental coverage, provided that a plan of self-insurance must include an aggregate stop-loss provision.
- (16) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state government, the federal government, or from any other source.
- (17) To defend any member of the governing body or any employee of the school corporation in any suit arising out of the performance of the member's or employee's duties for or employment with, the school corporation, if the governing body by resolution determined that the action was taken in good faith. To save any member or employee harmless from any liability, cost, or damage in connection with the performance, including the payment of legal fees, except where the liability, cost, or damage is predicated on or arises out of the bad faith of the member or employee, or is a claim or judgment based on the member's or employee's malfeasance in office or employment.
- (18) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures for the government and management of the schools, property, facilities, and activities of the school corporation, the school corporation's agents, employees, and pupils and for the operation of the governing body, which rules, regulations, and procedures may be designated by an appropriate title such as "policy handbook", "bylaws", or "rules and regulations".
- (19) To ratify and approve any action taken by a member of the governing body, an officer of the governing body, or an employee of the school corporation after the action is taken, if the action could have been approved in advance, and in connection with the action to pay the expense or compensation permitted under IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19, and IC 21-2-21 or any other law.
- (20) To exercise any other power and make any expenditure in carrying out the governing body's general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational

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standpoint in carrying out school purposes of the school corporation, including the acquisition of property or the employment or contracting for services, even though the power or expenditure is not specifically set out in this chapter. The specific powers set out in this section do not limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19, and IC 21-2-21 by specific language or by reference to other law."

Page 2, line 3, strike "energy".

Page 2, line 4, strike "energy".

Page 2, after line 12, begin a new paragraph and insert:

"SECTION 3. IC 36-1-12.5-0.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.7. As used in this chapter, "causally connected work" means work that is required to properly implement ~~an energy~~ a conservation measure.

SECTION 4. IC 36-1-12.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter "~~energy~~ "conservation measure":

(1) means:

(A) a school facility alteration; ~~or~~

(B) an alteration of a structure (as defined in IC 36-1-10-2 ~~or as referred to in IC 36-1-12-2~~) or system; or

(C) a technology upgrade;

designed to ~~provide billable revenue increases or~~ reduce energy ~~or water~~ consumption costs, ~~wastewater costs~~, or other operating costs; ~~including and~~

(2) includes the following:

(1) (A) Providing insulation of the school facility or structure and systems ~~within in~~ the school facility or structure.

(2) (B) Installing or providing for window and door systems, including:

(A) (i) storm windows and storm doors;

(B) (ii) caulking or weatherstripping;

(C) (iii) multi-glazed windows and doors;

(D) (iv) heat absorbing or heat reflective glazed and coated windows and doors;

(E) (v) additional glazing;

(F) (vi) the reduction in glass area; and

(G) (vii) other modifications that reduce energy consumption.

(3) (C) Installing automatic energy control systems.

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~~(4)~~ **(D)** Modifying or replacing heating, ventilating, or air conditioning systems.

~~(5)~~ **(E)** Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility or structure.

~~(6)~~ **(F)** Providing for other ~~energy~~ conservation measures that **provide billable revenue increases or** reduce energy or water consumption, ~~or~~ reduce operating costs, **or reduce wastewater costs**, including future:

~~(A)~~ **(i)** labor costs;

~~(B)~~ **(ii)** costs **or revenues** for contracted services; and

~~(C)~~ **(iii)** related capital expenditures.

(G) Installing an energy recovery system.

(H) Installing cogeneration systems that produce:

(i) steam; or

(ii) forms of energy such as heat or electricity;

for use primarily in a building or complex of buildings.

(I) Installing water and sewer conservation measures, including:

(i) plumbing fixtures; and

(ii) infrastructure.

(J) Installing equipment upgrades that improve accuracy of billable revenue generating systems.

(K) Installing automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.

SECTION 5. IC 36-1-12.5-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. As used in this chapter, "governing body" means the following:

(1) With respect to school corporations, the governing body (as defined in IC 20-10.1-1-5).

(2) With respect to a public library, the library board (as defined in IC 20-14-1-2).

(3) With respect to a library described in IC 20-14-7-6, the trustees of the library.

(4) With respect to ~~other political subdivisions~~, **units**, the legislative body (as defined in IC 36-1-2-9).

(5) With respect to other political subdivisions, the board or officer that has the power to award contracts.

SECTION 6. IC 36-1-12.5-2 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "guaranteed ~~energy~~ savings contract" refers to a contract entered into under this chapter, in which a qualified provider enters into an agreement with the governing body to:

- (1) evaluate and recommend to the governing ~~body~~ ~~energy~~ ~~body's~~ conservation measures; and
- (2) provide for the implementation of at least one (1) ~~energy~~ conservation measure.

SECTION 7. IC 36-1-12.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) As used in this chapter, "qualified provider" means the following:

- (1) Before July 1, 1999, the term means a person that satisfies both of the following:

- (A) The person is experienced in the design, implementation, and installation of energy conservation measures.
- (B) The person submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of the guaranteed energy savings contract.

- (2) After June 30, 1999, the term means a person that satisfies all of the following:

- (A) **Subject to subdivision (3)**, the person is experienced in the design, implementation, and installation of energy conservation measures.
- (B) The person is certified and meets the requirements of IC 4-13.6-4. The person's response to the request for proposals must include a copy of the person's certificate of qualification issued under IC 4-13.6-4.
- (C) **Subject to subdivision (3)**, the person provides energy conservation engineering services by a professional engineer licensed under IC 25-31 who is under the person's direct employment and supervision. The person's response to the request for proposals must include the license number of each professional engineer employed by the person to satisfy the requirement of this clause.
- (D) The person provides:
 - (i) monitoring for the facility performance guarantee; and
 - (ii) service personnel under the person's direct employment and supervision;
 for the duration of the contract's guarantee.
- (E) The person performs at least twenty percent (20%) of the

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work (measured in dollars of the total contract price) with its own workforce.

(F) The person submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of:

(i) the guaranteed energy savings contract; **or**

(ii) **the guaranteed savings contract.**

(3) With respect to conservation measures for which a contract is executed after June 30, 2005, the term includes a person that satisfies the following:

(A) The person is experienced in the design, implementation, and installation of conservation measures.

(B) The person provides engineering services with respect to conservation measures by a professional engineer licensed under IC 25-31 who is under the person's direct employment and supervision. The person's response to the request for proposals must include the license number of each professional engineer employed by the person to satisfy the requirement of this clause.

(b) For purposes of a guaranteed energy savings contract entered into before July 1, 1999, a person who was a qualified provider under subsection (a)(1) at the time the contract was entered into remains a qualified provider for that contract after June 30, 1999. If the person enters into:

(1) a guaranteed energy savings contract after June 30, 1999, and before July 1, 2005, the person must satisfy the requirements of subsection (a)(2); or

(2) a guaranteed savings contract after June 30, 2005, the person must satisfy the requirements of subsections (a)(2) and (a)(3);

to be considered a qualified provider.

SECTION 8. IC 36-1-12.5-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. As used in this chapter, "related capital expenditures" includes capital costs that:

(1) the governing body reasonably believes will be incurred during the contract term;

(2) are part of or are causally connected to the ~~energy~~ conservation measures being implemented; and

(3) are documented by industry engineering standards.

SECTION 9. IC 36-1-12.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. As used in this

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chapter, "utility ~~energy~~ efficiency program" refers to an energy, **a water, or a wastewater** efficiency program that:

- (1) includes ~~an energy~~ a conservation measure;
- (2) is established by a public utility (as defined in IC 8-1-8.7-2); and
- (3) is undertaken pursuant to this chapter.

SECTION 10. IC 36-1-12.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The governing body may enter into an agreement with a public utility to participate in a utility ~~energy~~ efficiency program or enter into a guaranteed ~~energy~~ savings contract with a qualified provider to **increase the political subdivision's billable revenues or** reduce the school corporation's or the political subdivision's energy **or water** consumption, **wastewater usage** costs, or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds:

- (1) that the amount the governing body would spend on the ~~energy~~ conservation measures under the contract and that are recommended in the report is not likely to exceed the amount of **increased billable revenues or the amount** to be saved in energy **and water** consumption costs, **wastewater usage costs**, and other operating costs over ten (10) years from the date of installation if the recommendations in the report were followed; and
- (2) in the case of a guaranteed ~~energy~~ savings contract, the qualified provider provides a written guarantee as described in subsection (d)(2).

(b) Before entering into an agreement to participate in a utility ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings contract under this section, the governing body must publish notice under subsection (c) indicating:

- (1) that the governing body is requesting public utilities or qualified providers to propose ~~energy~~ conservation measures through: ~~either~~
 - (A) a utility ~~energy~~ efficiency program; or
 - (B) a guaranteed ~~energy~~ savings contract; and
- (2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

- (1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;
- (2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty

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(30) days before the date by which proposals must be received;
and

(3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility ~~energy~~ efficiency program or guaranteed ~~energy~~ savings contract under this section must provide that:

(1) all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ten (10) years or the average life of the ~~energy~~ conservation measures installed from the date of final installation; ~~and~~

(2) in the case of the guaranteed ~~energy~~ savings contract:

(A) the:

(i) savings in energy **and water consumption costs, wastewater usage costs, and other** operating costs; **and**

(ii) **increase in billable revenues;**

due to the ~~energy~~ conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(3) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(e) An agreement or a contract under this chapter is subject to IC 5-16-7.

SECTION 11. IC 36-1-12.5-5.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.3. (a) This section applies only to a guaranteed energy savings contract **or a guaranteed savings contract** entered into after June 30, 1999.

(b) A qualified provider may enter into a subcontract:

(1) with a value of more than one hundred fifty thousand dollars (\$150,000); and

(2) for the performance of any part of a guaranteed energy savings contract **or guaranteed savings contract;**

only if the subcontractor is certified under IC 4-13.6-4.

SECTION 12. IC 36-1-12.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. IC 6-1.1-20 does not apply to an agreement to participate in:

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- (1) a utility ~~energy~~ efficiency program; or
 - (2) a guaranteed ~~energy~~ savings contract;
- entered into under this chapter.

SECTION 13. IC 36-1-12.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before the public utility or the qualified provider may install equipment in, make modifications to, or remodel a building or complex of buildings under a utility ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings contract, the public utility or the qualified provider (whichever applies) must issue a report that includes estimates for the following:

- (1) All costs attributable to the work stipulated in the agreement or the contract, including the costs of design, engineering, installation, maintenance, repairs, or debt service.
- (2) The amounts by which:
 - (A) energy **or water** consumption;
 - (B) **wastewater costs**; or
 - (C) operating costs;
 will be reduced.

(3) The amounts by which billable revenues will be increased.

(b) The report must also contain a listing of contractors and subcontractors to be used by the public utility or the qualified provider with respect to the ~~energy~~ conservation measures.

SECTION 14. IC 36-1-12.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. If the governing body enters into an installment payment contract for the purchase and installation of ~~energy~~ conservation measures under this chapter, the balance of the payments must be paid in installments not to exceed the lesser of ten (10) years or the average life of the ~~energy~~ conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation. **Annual revenues or savings from a guaranteed savings contract may be less than annual payments on the contract if during the length of the contract total savings and increased billable revenues occur as provided for by the contract. The financing of a guaranteed savings contract may be provided by:**

- (1) the vendor of the guaranteed energy, water, or wastewater savings program; or**
- (2) a third-party financial institution or company.**

SECTION 15. IC 36-1-12.5-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. ~~Energy~~ Conservation measures installed under a utility ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings contract must be approved by the following:

- (1) The state department of health, office of the state fire marshal, office of the state building commissioner, and any other state agency designated by statute.
- (2) An architect or engineer licensed under IC 25-4 or IC 25-31 if the ~~energy~~ conservation measures have a cost of more than fifty thousand dollars (\$50,000).

SECTION 16. IC 36-1-12.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The contractor and each subcontractor engaged in installing ~~energy~~ conservation measures under a guaranteed ~~energy~~ savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work, together with an accurate record of the number of hours worked by each worker and the actual wages paid.

(b) The payroll records required to be kept under this section must be open to inspection by an authorized representative of the governing body or the department of labor.

SECTION 17. IC 36-1-12.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. The governing body shall:

- (1) provide to the department of commerce not more than sixty (60) days after the date of execution of the guaranteed ~~energy~~ savings contract:
 - (A) a copy of the executed guaranteed ~~energy~~ savings contract;
 - (B) the:
 - (i) energy **or water** consumption costs;
 - (ii) **wastewater usage costs; and**
 - (iii) **billable revenues, if any;**
 before the date of execution of the guaranteed ~~energy~~ savings contract; and
 - (C) the documentation using industry engineering standards for:
 - (i) stipulated savings; and
 - (ii) related capital expenditures; and
- (2) annually report to the department of commerce, in accordance with procedures established by the department of commerce, the savings resulting in the previous year from the guaranteed ~~energy~~ savings contract or utility ~~energy~~ efficiency program.

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SECTION 18. IC 36-1-12.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) A guaranteed ~~energy~~ savings contract that includes stipulated savings must specify the methodology used to calculate the savings using industry engineering standards.

(b) Stipulated savings may be used for ~~energy~~ conservation measures including the following:

- (1) Heating.
- (2) Air conditioning.
- (3) Ventilating.
- (4) Lighting.
- (5) Roofing.
- (6) Windows.
- (7) Water conservation.
- (8) Fuel and power improvements.
- (9) Wastewater generation.**
- (10) Billable revenue increases.**

~~(9)~~ **(11)** Any work that is causally connected to the ~~energy~~ conservation measures listed in subdivisions (1) through ~~(8)~~: **(10)**.

(c) The guaranteed ~~energy~~ savings contract shall:

- (1) describe stipulated savings for:
 - (A) ~~energy~~ conservation measures; and
 - (B) work causally connected to the ~~energy~~ conservation measures; and
- (2) document assumptions by industry engineering standards.

SECTION 19. IC 36-1-12.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) An improvement that is not causally connected to ~~an energy~~ a conservation measure may be included in a guaranteed ~~energy~~ savings contract if:

- (1) the total value of the improvement does not exceed fifteen percent (15%) of the total value of the guaranteed ~~energy~~ savings contract; and
- (2) either:
 - (A) the improvement is necessary to conform to a law, a rule, or an ordinance; or
 - (B) an analysis within the guaranteed ~~energy~~ savings contract demonstrates that:
 - (i) there is an economic advantage to the political subdivision in implementing an improvement as part of the guaranteed ~~energy~~ savings contract; and
 - (ii) the savings justification for the improvement is documented by industry engineering standards.

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(b) The information required under subsection (a) must be reported to the department of commerce."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 504 as printed February 25, 2005.)

BEHNING, Chair

Committee Vote: yeas 5, nays 3.

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